

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LINDA C. BROWN,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
OCWEN FEDERAL BANK, NEW CENTURY	:	
MORTGAGE CORPORATION, and	:	
AMERIX MORTGAGE CORPORATION,	:	
Defendants.	:	No. 03-CV-142

MEMORANDUM AND ORDER

J. M. KELLY, J. **JUNE** , 2003

Presently before the Court is a Motion for Leave to File an Amended Complaint filed by Plaintiff Linda C. Brown ("Plaintiff"), to which Defendants Ocwen Federal Bank, New Century Mortgage Corporation and Amerix Mortgage Corporation ("Amerix") have not responded. In her original Complaint filed January 13, 2003, Plaintiff requested damages for violations of the federal Truth-in-Lending Act, 15 U.S.C. § 1601, et seq., Real Estate Settlement Practices Act ("RESPA"), 12 U.S.C. § 2607, et seq., Pennsylvania state regulations and common law.

On March 24, 2003, Amerix filed a Motion to Partially Dismiss Plaintiff's Complaint for her failure to allege specifically that Amerix violated RESPA by receiving kickbacks or sharing fees with a third party in connection with its mortgage brokering practices. Plaintiff did not file a response to Amerix's motion, but filed the instant request for leave to amend her Complaint to include specific factual allegations in support

of her claim against Amerix under RESPA. On May 8, 2003, this Court ordered that Amerix could file a response to Plaintiff's Motion to Amend within 10 days and advised that if Amerix did not file such a response, this Court could consider Plaintiff's motion as uncontested pursuant to Local Rule of Civil Procedure 7.1(c). See E.D. Pa. R. Civ. P. 7.1(c).

Pursuant to Local Rule of Civil Procedure 7.1(c), a district court may, in the absence of a timely response, grant a motion as uncontested. E.D. Pa. R. Civ. P. 7.1(c). Since this Court, in our May 7, 2003 Order, warned Amerix that it could treat Plaintiff's motion as uncontested if it did not file a response, we grant Plaintiff's motion to amend pursuant to Rule 7.1. Moreover, even if Amerix responded to Plaintiff's motion, Plaintiff's request to amend her Complaint is nevertheless warranted pursuant to Federal Rule of Civil Procedure 15. Rule 15 provides that "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served Otherwise a party may amend the party's pleading only by leave of the court or by written consent if justice so requires." Fed. R. Civ. P. 15(a). Since Amerix already filed a responsive pleading, Plaintiff must seek this Court's permission to amend pursuant to Rule 15(a). Generally, leave to amend should be freely granted absent a concern of (1) undue delay; (2) bad faith or dilatory motive; (3) continued failure to cure

deficiencies by prior amendments; (4) undue prejudice to the opposition; or (5) futility of amendment. Forman v. Davis, 371 U.S. 178, 182 (1962); In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997). Since none of these factors precluding amendment are present in the instant case, we find that, pursuant to Rule 15(a), Plaintiff's request to amend her Complaint is proper. Accordingly, for these forgoing reasons, Plaintiff's Motion for Leave to File an Amended Complaint is **GRANTED**.

BY THE COURT:

JAMES MCGIRR KELLY, J.